

CHAPTER 112

PUBLIC UTILITIES

HOUSE BILL 23-1039

BY REPRESENTATIVE(S) Bird, Amabile, Dickson, English, Joseph, Kipp, Lindsay, Ricks, Story, Velasco, McCluskie;
also SENATOR(S) Rodriguez and Winter F., Cutter, Hansen, Jaquez Lewis, Marchman, Priola.

AN ACT

CONCERNING A REQUIREMENT THAT ELECTRIC LOAD-SERVING ENTITIES PERIODICALLY REPORT ABOUT THE ADEQUACY OF THEIR ELECTRIC RESOURCES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 43 to title 40 as follows:

ARTICLE 43
Electric Resource Adequacy

40-43-101. Short title. THE SHORT TITLE OF THIS ARTICLE 43 IS THE "COLORADO RESOURCE ADEQUACY ACT OF 2023".

40-43-102. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT:

- (a) MAINTAINING ELECTRIC RELIABILITY AND RESOURCE ADEQUACY IN THE TRANSITION TO CLEAN ENERGY IS OF GREAT IMPORTANCE TO COLORADO AND ITS ELECTRICITY CUSTOMERS;
- (b) THE DEVELOPMENT OF A COMPREHENSIVE RESOURCE ADEQUACY REPORTING STRUCTURE FOR ALL WHOLESALE AND RETAIL LOAD-SERVING ENTITIES WILL HELP POSITION COLORADO UTILITIES FOR ENTRY INTO AN OPTIMAL ORGANIZED WHOLESALE MARKET, AS DEFINED IN SECTION 40-5-108 (1)(a), THAT WILL INCREASE THE EFFICIENT AND COST-EFFECTIVE USE OF CAPACITY RESOURCES AND ENABLE RESOURCE ADEQUACY ACROSS A BROADER FOOTPRINT THROUGHOUT THE STATE;
- (c) THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION HAS IDENTIFIED RESOURCE ADEQUACY AND ENERGY RISKS IN THE WESTERN INTERCONNECTION OF

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

THE ELECTRIC POWER GRID; AND

(d) COLORADO CAN BEGIN TO ADDRESS THESE RISKS BY ADDING RESOURCE ADEQUACY REPORTING REQUIREMENTS FOR ALL LOAD-SERVING ENTITIES TO HELP MEASURE THE SUFFICIENCY OF RELIABLE AND RESILIENT ELECTRIC SERVICE TO ALL COLORADO ELECTRICITY CUSTOMERS.

(2) THE GENERAL ASSEMBLY DECLARES THAT ALL LOAD-SERVING ENTITIES IN THE STATE SHOULD BE REQUIRED TO PROVIDE RESOURCE ADEQUACY ANNUAL REPORTS TO THE APPLICABLE REGULATORY OVERSIGHT ENTITY.

40-43-103. Definitions. AS USED IN THIS ARTICLE 43, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACCREDITED CAPACITY" MEANS THE CAPACITY VALUE GIVEN TO A PARTICULAR RESOURCE BASED ON NAMEPLATE CAPACITY AND THE EFFECTIVE LOAD-CARRYING CAPABILITY THAT IS APPLICABLE TO THE RESOURCE, AS IDENTIFIED AND EXPLAINED BY THE LOAD-SERVING ENTITY IN ITS RESOURCE ADEQUACY ANNUAL REPORT.

(2) "COLORADO ENERGY OFFICE" MEANS THE COLORADO ENERGY OFFICE CREATED IN SECTION 24-38.5-101 (1).

(3) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION CREATED IN SECTION 40-2-101 (1).

(4) (a) "LOAD-SERVING ENTITY" MEANS AN ENTITY WITH A LOAD-SERVING OBLIGATION.

(b) "LOAD-SERVING ENTITY" INCLUDES:

(I) A COOPERATIVE ELECTRIC ASSOCIATION, AS DEFINED IN SECTION 40-9.5-102 (1), THAT HAS VOTED TO EXEMPT ITSELF FROM COMMISSION JURISDICTION PURSUANT TO ARTICLE 9.5 OF THIS TITLE 40;

(II) A JOINT ACTION AGENCY ESTABLISHED PURSUANT TO LAW; AND

(III) A MUNICIPAL UTILITY.

(c) "LOAD-SERVING ENTITY" DOES NOT INCLUDE A RENEWABLE ENERGY GENERATION FACILITY EXEMPT FROM REGULATION AS A PUBLIC UTILITY PURSUANT TO SECTION 40-1-103 (2)(c).

(5) "LOAD-SERVING OBLIGATION" MEANS AN OBLIGATION TO:

(a) PROVIDE RETAIL ENERGY, CAPACITY, OR ANCILLARY SERVICES TO SERVE ELECTRIC CUSTOMER LOAD; OR

(b) PROVIDE WHOLESALE ELECTRICITY TO AN ENTITY OBLIGATED TO PROVIDE RETAIL ENERGY, CAPACITY, OR ANCILLARY SERVICES TO SERVE ELECTRIC CUSTOMER LOAD.

(6) (a) "PLANNING RESERVE MARGIN" MEANS THE PROJECTED AMOUNT OF ADDITIONAL GENERATING CAPACITY AVAILABLE ON AN ANNUAL BASIS, ABOVE FORECASTED WEATHER-NORMALIZED LOADS, TO COVER FUTURE UNCERTAINTIES SUCH AS TEMPERATURE VARIATIONS AND RESOURCE OUTAGES.

(b) "PLANNING RESERVE MARGIN" IS REFLECTED AS A FRACTION THAT IS CALCULATED BY SUBTRACTING FIRM PEAK DEMAND FROM THE SUM OF ACCREDITED CAPACITY AND DIVIDING THE RESULTING NUMBER BY THE FIRM PEAK DEMAND.

(7) (a) "REGULATORY OVERSIGHT ENTITY" MEANS THE ENTITY RESPONSIBLE FOR APPROVING THE ELECTRIC RESOURCE PLANS OR THE RETAIL OR WHOLESALE RATES OF A LOAD-SERVING ENTITY WITH RESPECT TO A LOAD LOCATED IN THE STATE.

(b) "REGULATORY OVERSIGHT ENTITY" INCLUDES:

(I) THE APPLICABLE CITY COUNCIL OR GOVERNING BOARD FOR A MUNICIPAL UTILITY OR A JOINT ACTION AGENCY ESTABLISHED PURSUANT TO LAW;

(II) THE GOVERNING BOARD FOR A COOPERATIVE ELECTRIC ASSOCIATION; AND

(III) THE COMMISSION FOR A PUBLIC UTILITY.

(c) IF A LOAD-SERVING ENTITY DOES NOT HAVE AN APPLICABLE REGULATORY OVERSIGHT ENTITY, THE LOAD-SERVING ENTITY'S REGULATORY OVERSIGHT ENTITY FOR THE PURPOSES OF THIS ARTICLE 43 IS THE COMMISSION.

(8) "RESOURCE ADEQUACY ANNUAL REPORT" MEANS AN ANNUAL REPORT THAT A LOAD-SERVING ENTITY IS REQUIRED TO PROVIDE TO THE APPLICABLE REGULATORY OVERSIGHT ENTITY PURSUANT TO SECTION 40-43-104.

(9) "RESOURCE ADEQUACY REPORTING PERIOD" MEANS A PERIOD OF AT LEAST FIVE CONSECUTIVE YEARS BEGINNING IN THE YEAR FOLLOWING THE YEAR IN WHICH A LOAD-SERVING ENTITY PROVIDES ITS RESOURCE ADEQUACY ANNUAL REPORT.

40-43-104. Resource adequacy annual report - statewide resource adequacy aggregate annual report - categories of information in the resource adequacy annual report - termination of reporting requirement. (1) (a) ON OR BEFORE APRIL 1, 2024, AND ON OR BEFORE APRIL 1 OF EACH YEAR THEREAFTER, EXCEPT AS PROVIDED IN SUBSECTION (2) OR (4) OF THIS SECTION, EACH LOAD-SERVING ENTITY IN THE STATE SHALL PROVIDE THE APPLICABLE REGULATORY OVERSIGHT ENTITY A RESOURCE ADEQUACY ANNUAL REPORT IN WHICH THE LOAD-SERVING ENTITY IDENTIFIES THE GENERATING RESOURCES AND ACCREDITED CAPACITY USED TO SERVE ITS CUSTOMERS. A LOAD-SERVING ENTITY MAY DESIGNATE ITS WHOLESALE ELECTRIC SUPPLIER AS AN AUTHORIZED AGENT TO PROVIDE THE RESOURCE ADEQUACY ANNUAL REPORTS ON BEHALF OF THE LOAD-SERVING ENTITY, AND IF SO DESIGNATED BY THE LOAD-SERVING ENTITY, THE WHOLESALE ELECTRIC SUPPLIER SHALL BE SOLELY RESPONSIBLE FOR THE PREPARATION AND SUBMISSION OF THE RESOURCE ADEQUACY ANNUAL REPORTS ON BEHALF OF THE LOAD-SERVING ENTITY.

(b) ON OR BEFORE APRIL 30, 2024, AND ON OR BEFORE APRIL 30 OF EACH YEAR THEREAFTER, EACH REGULATORY OVERSIGHT ENTITY SHALL SUBMIT THE RESOURCE

ADEQUACY ANNUAL REPORTS RECEIVED FROM LOAD-SERVING ENTITIES PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION TO THE COLORADO ENERGY OFFICE.

(c) ON OR BEFORE JULY 1, 2024, AND ON OR BEFORE JULY 1 OF EACH YEAR THEREAFTER, THE COLORADO ENERGY OFFICE SHALL AGGREGATE THE RESOURCE ADEQUACY ANNUAL REPORTS RECEIVED FROM REGULATORY OVERSIGHT ENTITIES PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION TO CREATE AND MAKE PUBLICLY AVAILABLE A STATEWIDE RESOURCE ADEQUACY AGGREGATE ANNUAL REPORT.

(2) IF A LOAD-SERVING ENTITY HAS A WHOLESALE POWER ARRANGEMENT WITH A PUBLIC UTILITY, COOPERATIVE ELECTRIC ASSOCIATION, JOINT ACTION AGENCY ESTABLISHED PURSUANT TO LAW, OR POLITICAL SUBDIVISION THAT ITSELF DEMONSTRATES RESOURCE ADEQUACY THROUGH A RESOURCE PLANNING PROCESS BEFORE THE APPLICABLE REGULATORY OVERSIGHT ENTITY, THE PUBLIC UTILITY'S, COOPERATIVE ELECTRIC ASSOCIATION'S, JOINT ACTION AGENCY'S, OR POLITICAL SUBDIVISION'S RESOURCE ADEQUACY ANNUAL REPORT PROVIDED TO THE APPLICABLE REGULATORY OVERSIGHT ENTITY COVERS THE LOAD-SERVING ENTITY FOR ANY LOAD COVERED BY THE DEMONSTRATION OF RESOURCE ADEQUACY BY THE PUBLIC UTILITY, COOPERATIVE ELECTRIC ASSOCIATION, JOINT ACTION AGENCY, OR POLITICAL SUBDIVISION.

(3) A RESOURCE ADEQUACY ANNUAL REPORT MUST BE MADE PUBLICLY AVAILABLE ON THE LOAD-SERVING ENTITY'S WEBSITE USING A COMMON UNIFORM RESOURCE LOCATOR CONVENTION, AS DETERMINED BY THE COLORADO ENERGY OFFICE, AND INCLUDE THE FOLLOWING CATEGORIES OF INFORMATION FOR EACH YEAR IN THE RESOURCE ADEQUACY REPORTING PERIOD:

(a) A NATIVE LOAD FORECAST;

(b) NAMEPLATE CAPACITY AND ACCREDITED CAPACITY BY INDIVIDUAL RESOURCE, INCLUDING RENEWABLE ENERGY RESOURCES AND STORAGE;

(c) IDENTIFICATION OF ANY ACCREDITED CAPACITY ATTRIBUTABLE TO DISTRIBUTED GENERATION RESOURCES, INCLUDING ENERGY STORAGE;

(d) IDENTIFICATION OF ANY DEMAND RESPONSE THAT THE LOAD-SERVING ENTITY RELIED UPON FOR RESOURCE PLANNING PURPOSES OR USES TO REDUCE PEAK LOAD;

(e) IDENTIFICATION OF THE TARGET PLANNING RESERVE MARGIN;

(f) IDENTIFICATION OF THE FORECASTED PLANNING RESERVE MARGIN;

(g) IDENTIFICATION OF THE TOTAL ACCREDITED CAPACITY AND ANY FORMULAS OR ASSUMPTIONS USED TO CALCULATE THE ACCREDITED CAPACITY; AND

(h) IDENTIFICATION OF ANY EXCESS CAPACITY OR RESOURCE NEEDS AND OF PLANS TO MITIGATE FORECASTED SHORTFALLS PRIOR TO EXPERIENCING PEAK LOAD SUPPLY CONDITIONS THAT WERE FORECASTED IN CALCULATING THE PLANNING RESERVE MARGIN.

(4) FOR EACH LOAD-SERVING ENTITY PARTICIPATING IN AN ORGANIZED

WHOLESALE MARKET, AS DEFINED IN SECTION 40-5-108 (1)(a), OR A VOLUNTARY REGIONAL RESOURCE ADEQUACY REPORTING PROGRAM, THE LOAD-SERVING ENTITY'S OBLIGATION TO PROVIDE RESOURCE ADEQUACY ANNUAL REPORTS, INCLUDING ANY OBLIGATION OF ANOTHER LOAD-SERVING ENTITY TO PROVIDE RESOURCE ADEQUACY ANNUAL REPORTS IF THE LOAD-SERVING ENTITY HAS BEEN PROVIDING RESOURCE ADEQUACY ANNUAL REPORTS ON THE OTHER LOAD-SERVING ENTITY'S BEHALF PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, TERMINATES ON THE DATE THAT THE LOAD-SERVING ENTITY BEGINS PARTICIPATING IN AN ORGANIZED WHOLESALE MARKET OR IN THE YEAR FOLLOWING THE LOAD-SERVING ENTITY'S SUBMISSION OF A COMPLIANCE REPORT REQUIRED BY A VOLUNTARY REGIONAL RESOURCE ADEQUACY REPORTING PROGRAM.

SECTION 2. Appropriation. For the 2023-24 state fiscal year, \$14,737 is appropriated to the office of the governor for use by the Colorado energy office. This appropriation is from the general fund and is based on an assumption that the office will require an additional 0.1 FTE. To implement this act, the office may use this appropriation for program administration.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 25, 2023